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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,060	07/06/2000	KAZUAKI OHKUBO	YAO-4321US	7496

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EXAMINER

SHAY, DAVID M

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 02/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/530,060

Applicant(s)

Oshubor et al

Examiner

J. Shay

Group Art Unit

3739

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE — 3 — MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on July 24, 2000
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-4, 17-20, & 32-74 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-4, 17-20, & 32-74 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No. 4
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3, 4, 19, 20, 32; 33; 40-55 and 59-73 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3, 4, 19, 20, and 71-73 are indefinite as they recite no further structural limitation. In claim 32 is indefinite because exactly what is intended to be claimed by reciting the means as "integrated together" is unclear. In claim 33 exactly what is intended to be claimed by reciting the means as "independently provided from each other" is unclear. In claims 40-55 and 59-70 it is unclear exactly what, other than a discharge lamp is encompassed by the term "a configuration of a discharge lamp" and similarly by those of a fluorescent discharge lamp; a incandescent lamp and a solid light emitting device.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-4, 17-20, and 34-73 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. These claims are single means claims.

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5. The examiner notes that the instant claims are extremely broad and further notes applicants explanation in the paragraph bridging pages 50 and 51 of the instant disclosure that "the deviation (duv) of the chromaticity of light from a Plankian locus in CIE 1960 USC chromaticity diagram is within ± 0.01 in order to ensure that the color of the light would not be uncomfortable". Thus light which is not of a color which causes discomfort will be considered to be within ± 0.01 of such Plankian locus.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1-4, 17-20, 32, 34, 37, 39, 56, 71 and 72 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by the sun

8. The sun illuminates light of a color which does not cause discomfort and which has the various minimum requirements for the energy in the wavelength ranges claimed.

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9. Claims 1, 17, 33, 36-43, 58 and 61 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by a Helium Neon laser.

Helium Neon lasers emit light at 632 nm and no light in the 1100 nm to 2.5 micron range. They are pumped by an electrical discharge.

10. Claims 1, 17, 35-39, 52-58, and 68-70 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Diamantopoulos et al.

11. See column 6, line 1 – column 10, line 62.

12. Claims 1, 17, and 36-47 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Hashimoto et al.

13. Claims 1, 17, 36-39, and 48-51 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Shimizu et al.

14. Claims 17 and 72-74 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by the sun in combination with a mirror.

The sunⁿ has the properties set forth above. The mirror will reflect and therefore *dr* irradiate the sunlight and display e.g. an image of the person looking in the mirror.

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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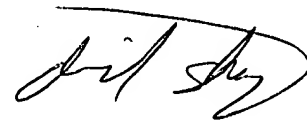
16. Claims 17, and 56-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashimoto et al in combination with Diamantopoulos et al. Hashimoto et al teach a light source with the desired output wavelength. Diamantopoulos et al teach the desirability of providing the power and pulse repetition for biostimulation. It would have been obvious to the artisan of ordinary ^{skill} ~~art~~ to provide to particular wavelength and ⁱⁿ repetition rates, since these are useful for biostimulation, thus producing a device such as claimed.

17. Claims 17, 56-59 and 65-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimizu et al in combination with Diamantopoulos et al.. Shimizu et al teach an incandescent light source. Diamantopoulos et al provide the teachings set forth above. It would have been obvious to the artisan of ordinary skill to employ the wavelength and pulse rates claimed, since these are useful for biotimulation, thus producing a device such as claimed.

Any inquiry concerning this communication should be directed to David Shay at telephone number (703) 308-2215.

David Shay:bhw

Febrary 20, 2002.



DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330

**Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01**

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in ABANDONMENT of the application.